IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1973

WOODSTOCK, INC.,

Petitioner,

vs.

NICHOLAS A. KARRIS,

Respondent.

ANSWER TO A PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS, AND BRIEF IN OPPOSITION TO SAID PETITION

The Respondent, Nicholas A. Karris, submits, that Certiorari should be denied in this case, and that the petition itself does not conform to the rules of this Court. The Respondent, therefore, asks that the petition be denied. In support of this prayer Respondent argues as follows:

REASONS FOR DENYING THE WRIT

I.

THE PETITION DOES NOT CONFORM TO THE RULES OF THIS COURT.

The petition ignores Rule 23(f) of the Rules of this Court. The petition purports to raise Federal questions arising out of the Commodity Exchange Act (Title 7, U.S. Code, Sections 1 et seq.) but does not specify when or where or in what manner those questions were raised below. The opinion of the Illinois Appellate Court does not pass on those questions. The Supplemental opinion on petition for rehearing does not reveal the presence of any Federal claim, and the denial of petition for leave to appeal by the Supreme Court of Illinois reveals no such question. No averment is made that such question was ever raised, and we respond and say that this petition for certiorari is the first suggestion in this most mundane of all cases that a Federal question is involved. The presentation of this petition in a most ordinary piece of State Court litigation is an abuse of the right to file such petitions, and should be denied under Rule 23(4) of the Rules of this Court.

II.

THE PETITIONER HAD NO SPECIAL RIGHTS UNDER THE COMMODITIES EXCHANGE ACT WHICH WERE VIOLATED IN THIS CASE.

The trial court heard the evidence. His Honor decided that Karris did not authorize certain trades in his account.

His Honor, therefore, held that Karris should get back his money,which he had deposited to trade, and that Karris should not be obliged to pay for certain losses suffered when unauthorized trades were placed against his account. The factual issue was properly tried, and the conclusion was almost inevitable when it is considered that the Respondent's principal officer testified one way on his deposition and a different way at trial. Perjury is almost never prosecuted when it occurs in civil cases, but it plainly occurred here, and it should, at least, allow a trial judge the privilege of disregarding at least one of two entirely conflicting stories.

Now, for the first time, it is argued that the Commodities Exchange Act, which contains a recital of the rule of respondeat superior (Title 7 U.S.C. Section 4) should require that the customer, who did not authorize a trade, bear a loss as opposed to the brokerage house, which wrongfully placed the trades in his account. Broad statements (without citation of legislative history) are made as to Congressional intent, and now it is claimed that the scope of the agent's authority is, somehow, a Federal question.

We contend that nothing in any Act or Federal law requires that the broker's customer pay for unauthorized trades. No case says so; no statute says so. The lower courts were right on the law as argued, and the result is right.

We add that the petitioner had the right to attempt to remove the case to Federal Court if it felt this were a case in which Federal jurisdiction were exclusive. There was no attempt at removal.

III.

THE ILLINOIS COURTS CORRECTLY DECIDED THE HEARSAY QUESTION.

Petitioner seeks to raise to the level of a Federal due process question the ruling by the trial court that a Woodstock employee could not testify to what he heard another Woodstock employee say into a telephone. The witness did not hear the other end of the call, and had no direct knowledge of who was on the other telephone.

This was considered to be hearsay by the trial court. There was no mention of the Federal constitution at the trial, and "hearsay" did not become "due process" until the need arose to write a petition for certiorari. We contend that this conversation did in fact come within the hearsay objection. The words sought to be quoted were not shown to have been said within the presence of Karris or by Karris; they were offered to show the truth of the point in question, which was that Karris knew of the trades, and the words were an unsworn, out of court statement. We add that the person quoted, Scanlon, testified by evidence deposition at the trial. He was cross-examined, but was never asked about that particular conversation. It is the Respondent's belief that the quoted conversation was, like the Becker conversation with Karris, an afterthought inserted in a desperate attempt to change the result of the trial after the initial evidence had gone adversely. We contend that the ruling of the trial court was correct.

PRAYER

We submit that the petition should be denied.

Respectfully submitted,

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